the property should, in fact, be shared in the absence of any precise agreement.

On the facts which I have found it is clear that the plaintiff made a substantial financial contribution towards the acquisition of the joint matrimonial home in circumstances which are peculiar to this case at least and which justify the conclusion that it was the common intention of both spouses that they should share the house at least in equal shares even though the conveyance was taken in the name of the husband alone.

As I have earlier stated, I accept her evidence that the husband asked her to make over her monthly salary to him to enable this purpose to be effected even though her monetary contributions to the family expenses as a whole may have exceeded the value of a half-share in the house. In the early days of their marriage, however, they had to rely on financial assistance from his mother to the extent of about $7,500 towards deposit and initial capital improvements as I have earlier said and it is this amount and not $9,000 which should be deducted in the final computation of what sum remains due to each from the balance of the proceeds of sale less redemption monies, commission, costs etc. as set out in his affidavit of 11th April, 1973.

Prayer 1 claims an equal share in the house on her behalf and no more, in my view quite properly. I do not therefore have to consider whether she is entitled to any larger share. In fact, in his opening address, her counsel submitted that she was entitled to at least a one-third share. In his closing address however he contended that, as the husband was bound to maintain her out of his own earnings, her share should be one-half. Applying the principle, to which I have already referred, that the court does not create new rights but merely ascertains existing rights in the light of their intentions and/or agreement at the time of the acquisition of the property, it would in my view be correct to say that they then intended to share the property in equal shares.

Subject to what I have found as to allowable deductions from the total proceeds of sale, there will be an order in terms of prayer 1 with costs.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

TAI TONG REALTY CO. (PTE) LTD. v. GALSTAUN & ANOR.

[C.A. (Wee Chong Jin C.J., Chua & Tan Ah Tah JJ.)
September 11, 1973]
[Singapore — Civil Appeal No. 20 of 1973]

Contract — Sale of land — Sale "subject to contract" — No agreement until formal contract signed.

The expression "subject to contract" is so well known and has acquired so definite a meaning in relation to sale of land that unless the facts and circumstances are so very strong and exceptional it's effect in law is that there is no binding contract of sale but a mere conditional contract of sale, the condition under the expression being that the parties agree to enter into another contract.

In this case the appeal against the decision of Choor Singh J. reported at p. 7 *ante.* was dismissed.

Case referred to:-

(1) *Von Hatzfeldt-Wildenburg* v. *Alexander* [1912] 1 Ch. 284.

COURT OF APPEAL.

K. A. O'Connor for the appellants.

K. E. Hilborne for the respondents.

Wee Chong Jin C.J. (delivering oral judgment of the Court): The appeal must be dismissed for the reasons which we now give. The facts are set out in the judgment of Mr. Justice Choor Singh. In substance the appellants were given an option by the respondents who owned the property known as No. 27 Tomlinson Road, to purchase that property. The option was given on the 31st July 1972 and was exercised in January 1973. It is a written option and the terms are set out in the document at pages 10 to 13 of the record of appeal. Now, the first of the "terms and conditions" in that written document states that "the sale is subject to contract". The expression "subject to contract" is so well known and has acquired so definite a meaning in relation to the sale of land that unless the facts and circumstances are so very strong and exceptional it's effect in law is that there is no binding contract of sale but a mere conditional contract of sale, the condition under that expression being that the parties agree to enter into another contract.

In *Von Hatzfeldt-Wildenburg* v. *Alexander*(1) at page 288 Parker J. as he then was, gave the now often quoted formulation of how the courts would construe that kind of expression such as "subject to contract" or "subject to formal contract" which has been accepted in all subsequent cases. Parker J. said —

"It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of a further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract.... In the latter case there is a binding contract...."

If one considers the whole of this written document relied on by Mr. O'Connor there can be no doubt at all that there is no contract binding on the respondents to sell to the option holder who has exercised the option, the property stated in that option. It is said by Mr. O'Connor that the facts and circumstances in our particular case, particularly where it is a term of the option that the $2,000 deposit paid by the option holder to the grantor of the option is stated to be non-refundable in any event, are good grounds for the court construing the expression "subject to contract" as "being a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through". But when one looks at clause 4 of the written option, which says "the contract for the sale and purchase shall be executed within six weeks of the date of the exercise of this option" and at clause 5 which states "on the signing of the agreement for sale and purchase a further 10 per cent of the purchase price...", it becomes clear beyond a shadow of doubt that the

expression "subject to contract" in clause 1 of the written option clearly indicates that the execution of a further contract is a term or condition of the bargain and there is therefore no binding contract of sale binding on the respondents to sell the property in question to the appellants.

For these reasons we dismiss the appeal with costs and order that the deposit be paid to the respondents or their solicitors.

Appeal dismissed.

Solicitors: *Drew & Napier; Hilborne & Co.*

MALAYSIAN REPORTS

JANAKI & ANOR. v. CHEOK CHUAN SENG & ORS.

[O.C.J. (Wan Suleiman J.) October 3, 1972]

[Seremban — Civil Suit No. 182 of 1970]

Land Law — Trespass to property resulting in inundation by sea water — Exemplary damages — When will be awarded.

Damages — Exemplary damages — Trespass to property — Inundation by sea water — When justified.

The plaintiffs claimed that the defendants the owners of land opposite their land and separated therefrom by a road had wrongfully entered and trespassed upon their land, digging a canal and widening and deepening an existing drain thereon. In consequence, the plaintiffs averred that their land had been made unsuitable for cultivation or other use, there being imminent danger of sea water inundating their land.

The defendants whilst not denying that they had been on the plaintiffs' land denied that there had been wrongful entry or trespass, contending that they had obtained prior licence from the plaintiffs' manager and agent to do so, and that such dredging would prevent future flooding of land belonging to both parties.

There was evidence to inundation by sea water resulting in dying of trees on the plaintiffs' land.

Held: (1) the defendants were liable to the plaintiffs for the damage caused by inundation by sea water to the estimated amount of $2,560;

(2) as the defendants brazenly and in complete disregard of the plaintiffs' right of property entered upon the latters' property to dredge the existing canals and through their servant resorted to threatening behaviour, exemplary damages fixed at $2000 should be awarded to the plaintiffs.

Cases referred to:

(1) *Loudon* v. *Ryder* [1953] 2 Q.B. 202.

(2) *Davis* v. *Bromley U.D.C.* [1903] 67 J.P. 275.

CIVIL SUIT.

N. Ramachandran for the plaintiffs.

Lee Boon Peng for the defendants.

Wan Suleiman J.: Plaintiffs who are the registered proprietors of Lots 3327 and 3323, in the Mukim of Jimah, District of Port Dickson, land which adjoins the sea coast claim that defendants the registered proprietors of land opposite plaintiffs' land and separated therefrom by a road, had on or about 16th October, 1970 wrongfully entered and trespassed upon both lots, digging a canal in one and widening and deepening an existing drain on the other. In consequence, plaintiffs aver that their land had been made unsuitable for cultivation or other use, there being imminent danger of sea water inundating their land.

Defendants whilst not denying that they had been on plaintiffs' land deny that there had been wrongful entry or trespass, contending that they had obtained prior licence from plaintiffs' manager and agent to do so, and that such dredging would prevent future flooding of land belonging to both parties.

Since the burden of proving such consent lay upon the defendants, who would fail if no evidence at all were given on either side, I ruled that the defendants should begin.

Second defendant Choh Hong Kee @ Cheok Kien Yap said that he and the other three defendants were the co-owners of Lot No. 49, which was opposite plaintiffs' land. In October, 1970 owing to rain, both